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**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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T. H. JOHNSON,

Appellant,

vs.

MATT W. STARWICH, as Sheriff of King  
County, State of Washington,

Appellee.

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**Supplemental Transcript of Record.**

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Upon Appeal from the United States District  
Court for the Western District of Wash-  
ington, Northern Division.

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**FILED**  
**AUG 27 1925**  
**F. D. MONCKTON,**  
**CLERK**



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United States Circuit Court of Appeals for the  
Ninth Circuit.

No. 4634.

T. H. JOHNSON,

Appellant,

vs.

MATT STARWICH, as Sheriff of King County,  
State of Washington,

Appellee.

STIPULATION RE SUPPLEMENTAL TRAN-  
SCRIPT OF RECORD.

It is hereby stipulated by and between the parties hereto, by their respective attorneys, Patterson & Ross, attorneys for appellee, and John J. Sullivan, F. C. Regan, John F. Dore and V. G. Frost, attorneys for appellant, that the Clerk of the above-entitled court may print as a supplemental transcript of the record in the above-entitled case the following:

1. The allegations contained in Paragraphs I to IX, inclusive, of appellee's answer to order to show cause; and, Exhibit "D," the commitment attached thereto.

2. Also that part of Exhibit "E" attached to said answer showing appellant's offer to prove by himself and other witnesses that appellant was not in British Columbia at the time the robbery of which he was accused was committed, and Judge

Gilliam's ruling on said offer permitting appellant to testify but denying the right to call other witnesses, and appellant's refusal to testify.

3. Also the testimony of the witnesses Archie Mainwaring Johnson and A. C. Rosenfeldt, as the same appears in Exhibit "E" attached to the answer to order to show cause.

JOHN J. SULLIVAN,  
JOHN F. DORE,  
V. G. FROST,  
FRANK C. REAGAN,  
Attorneys for Appellant.  
T. H. PATTERSON and  
BERT C. ROSS,  
PATTERSON & ROSS,  
Attorneys for Appellee.

[Endorsed]: No. 4634. United States Circuit Court of Appeals for the Ninth Circuit. Stipulation re Supplemental Transcript of Record. Filed Aug. 13, 1925. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

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In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

No. 9296.

In the Matter of the Application of T. H. JOHNSON, for a Writ of Habeas Corpus and for a Writ of Certiorari.

ANSWER OF RESPONDENT, SHERIFF OF  
KING COUNTY, STATE OF WASHING-  
TON, TO ORDER TO SHOW CAUSE.

COMES NOW the respondent, Matt Starwich, and for answer to the show cause order issued herein, shows and alleges as follows:

I.

That Mitchell Gilliam, hereinafter mentioned and referred to, is a Judge of a court of record of general jurisdiction, of the State of Washington, one of the States of the United States.

II.

That before the said Mitchell Gilliam, there was on the 9th day of January, 1925, made and filed a complaint under oath, a copy of which is attached hereto, marked Exhibit "A," and by this reference made a part hereof.

III.

That upon the filing of said complaint the said Mitchell Gilliam issued his warrant for the arrest of the said R. C. James, *alias* T. H. Johnson, mentioned in said complaint, which warrant is attached hereto, marked Exhibit "B," and by this reference made a part hereof.

IV.

That thereafter your respondent, under and by virtue of said warrant arrested the said R. C. James, *alias* T. H. Johnson, [39\*] as shown by the return of your respondent on said warrant, a

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\*Page-number appearing at foot of page of original certified Supplemental Transcript of Record.

copy of which return is attached hereto, marked Exhibit "C," and by this reference made a part hereof.

## V.

That thereafter on the 12th and 15th days of January, 1925, the said Mitchell Gilliam heard and considered evidence touching the criminality of said R. C. James, *alias* T. H. Johnson, with reference to the charge set forth and contained in the aforementioned complaint and warrant.

## VI.

That the said Mitchell Gilliam deemed the evidence so heard and considered by him sufficient to sustain the charge in said complaint contained, under the terms of the extradition treaty existing between the United States and the Kingdom of Great Britain, which said treaty applies to the Dominion of Canada, and issued his warrant of commitment, remanding the said R. C. James, *alias* T. H. Johnson, to the county jail of King County, a copy of which order of commitment is attached hereto marked Exhibit "D," and by this reference made a part hereof.

## VII.

That your respondent further alleges that there was evidence received and considered by the said Mitchell Gilliam, acting as Extradition Commissioner which said evidence is not set forth in the petition of the petitioner herein. That respondent further denies the allegation in Paragraph Four (4) of the petitioner's petition herein wherein it is alleged that the said Mitchell Gilliam, sitting as



Extradition Commissioner, refused to allow the petitioner to produce any testimony in said petitioner's own behalf. [40]

VIII.

That your respondent is informed and believes and therefore states the fact to be, that the said Mitchell Gilliam, referred to in the petition of the petitioner herein, did certify to the Secretary of State of the United States the evidence received by him in the matter of the extradition of R. C. James, *alias* T. H. Johnson, on the 3d day of February, 1925, as he was required by the laws of the United States to do, and has at this time no control over the record in the said matter.

IX.

That your respondent now holds in custody the said petitioner, R. C. James, *alias* T. H. Johnson, under and by virtue of the authority of the said commitment issued as herein set forth.

WHEREFORE, having fully answered, your respondent prays that petition of the petitioner herein be denied.

PATTERSON & ROSS,  
Attorneys for Respondent.

Office & Post Office Address:

Patterson & Ross

806 Dexter Horton Bldg.,

Seattle, Washington, U. S. A. [41]

EXHIBIT "D" TO AMENDED COMPLAINT—  
COMMITMENT.

In the Superior Court of the State of Washington.  
Before the Honorable MITCHELL GILLIAM  
Judge of the Said Superior Court Acting as  
Extradition Magistrate Under and by Virtue  
of Section 5270 of the Revised Statutes of the  
United States.

No. 179,090.

In the Matter of the Extradition of R. C. JAMES,  
*alias* T. H. JOHNSON.

The above-entitled matter having come on for hearing before me, Mitchell Gilliam, a Judge of the Superior Court of the State of Washington, on the 12th and 15th days of January, 1925, at Seattle, King County, State of Washington, and,

The said Superior Court being a Court of Record of General Jurisdiction of the State of Washington, one of the States of the United States, and

I, said Mitchel Gilliam, acting as Extradition Magistrate to hear evidence of the criminality of said R. C. James, *alias* T. H. Johnson in the above-entitled matter under and by virtue of Section 5270 of the Revised Statutes of the United States, and

It appearing that a complaint under oath was heretofore on the 9th day of January, 1925, made and filed before me at Seattle aforesaid, by Bert C. Ross charging that the said R. C. James *alias* T. H. Johnson had committed the *rime* of [48]

ROBBERY on the 12th day of December, 1924, at the City of Nanaimo in the Province of British Columbia, Dominion of Canada, and

It further appearing that said Bert C. Ross in making said complaint was acting for and on behalf of the Dominion of Canada, being duly authorized so to do, and that this is an extradition proceeding promoted by the government of the Dominion of Canada, and

It further appearing that the said R. C. James, *alias* T. H. Johnson, was duly arrested in King County, State of Washington, on a warrant issued *be me* the said Mitchell Gilliam, acting as aforesaid, and

The said complaint having been read to the said R. C. James, *alias* T. H. Johnson, and the said R. C. James, *alias* T. H. Johnson, appearing at all times during the hearing in person and being represented by counsel John F. Dore, and

I, the said Mitchell Gilliam aforesaid, having heard the sworn testimony of witnesses and having received in evidence other proofs offered on behalf of the Dominion of Canada, and

It appearing that the crime charged against the said R. C. James, *alias* T. H. Johnson, is the crime of robbery mentioned in and extraditable under the treaty of extradition now existing and in force between the United States of America and the Kingdom of Great Britian, the provisions of which treaty apply to the Dominion of Canada, one of His Majesty's British Dominions beyond the seas, and

It further appearing that said R. C. James, *alias* T. H. Johnson, is the person accused of said offense in the Dominion of Canada; that the evidence heard and considered [49] by me, would, under the laws of the State of Washington and the United States, justify the apprehension and commitment for trial of said R. C. James, *alias* T. H. Johnson, had the crime aforesaid been committed in the State of Washington, and that said evidence sustains the said charge, and that there is probable cause for holding the accused R. C. James, *alias* T. H. Johnson, for trial,

Now, therefore, it is hereby

ORDERED, ADJUDGED and DECREED that the said R. C. James, *alias* T. H. Johnson, be, and he is, hereby remanded to the County Jail of King County, State of Washington, there to remain until delivered up, pursuant to the requisition of the proper authorities of the Dominion of Canada, in accordance with the provisions of the existing extradition treaty between the United States and Great Britain, and the laws of the United States.

Done this 15th day of January, 1925.

[Seal] (Signed) MITCHELL GILLIAM,  
Judge of the Superior Court of the State of Washington, a Court of Record of General Jurisdiction, Acting Herein Under and by Virtue of Section 5270 of the Revised Statutes of the United States as Extradition Magistrate. [50]

TESTIMONY OF A. C. ROSENFELDT, FOR  
PETITIONER.

A. C. ROSENFELDT, produced as a witness on behalf of the petitioner, having been first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. ROSS.)

Q. State your name, please.

A. A. C. Rosenfeldt.

Q. What is your residence? [93—41]

A. Seattle, Washington.

Q. What, if any, official position do you hold in King County, State of Washington.

A. I am doing criminal identification work for King County, Bertillion system.

Q. That is, in the county jail?

A. Yes, sir, in the county jail.

Q. Under the employment of the Sheriff of King County, State of Washington? A. Yes, sir.

Q. What experience have you had in the business or art of photography? A. About ten years.

Q. What has been the nature of that work?

A. Commercial and criminal work.

Q. For whom have you been employed in the commercial photography?

A. I was at Lowman & Hanford's for a number of years.

Q. How long have you been in charge of the Bertillion Department of King County, Sheriff's office?

A. Year ago last November.

(Testimony of A. C. Rosenfeldt.)

Q. Mr. Rosenfeldt I direct your attention to a photograph which is annexed to and made a part of Petitioner's Exhibit "A" in this matter, and which is known in this record as Exhibit No. 4; I will ask you to look at that photograph and say whether or not you have ever seen that photograph or one like it before?

A. I took that photograph on December 23d, 1924.

Q. You took that photograph? A. Yes, sir.

[94—42]

Q. Of whom is that a photograph?

A. T. H. Johnson.

Q. Is that the same Johnson who sits at this defendant's table here? A. Yes, sir.

Q. Look at the facial features of T. H. Johnson, the accused in these proceedings, who is known in these proceedings as T. H. Johnson, *alias* R. C. James, and say whether or not the photograph which you have in your hand, and is annexed to Petitioner's Exhibit "A," which is Exhibit 4 in that proceeding, and say whether or not the photograph, Exhibit 4, is a fair representation of the facial features of T. H. Johnson, *alias* R. C. James?

A. Yes, sir.

Mr. ROSS.—You may take the witness.

Mr. DORE.—No cross-examination.

(Witness excused.)

Mr. ROSS.—I will call Mr. A. M. Johnson.

TESTIMONY OF A. M. JOHNSON, FOR PETITIONER.

A. M. JOHNSON, produced as a witness on behalf of the petitioner, having been first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. ROSS.)

Q. State your name?

A. Archie Mainwaring Johnson.

Mr. ROSS.—I will ask that this document be marked Petitioner's [95—43] Exhibit "B" for identification.

(Document so marked.)

Q. Where do you reside, Mr. Johnson?

A. Victoria, British Columbia.

Q. What is your occupation?

A. Barrister-at-law.

Q. How long have you practiced that profession?

A. Over twenty-eight years.

Q. What experience have you had in practicing criminal law under the Criminal Code of the Dominion of Canada?

A. I have practiced both as prosecutor and as defendants' counsel and Deputy Attorney General of the Province of British Columbia for other four years, from 1917 to 1921.

Q. As such Deputy Attorney General what were your duties with reference to the enforcement of the Criminal Code of Canada so far as it pertains to and effects the Province of British Columbia?

(Testimony of A. M. Johnson.)

A. I have complete *complete* charge of all the prosecutions in behalf of the Crown.

Q. What official position do you hold with reference to this matter that is now pending in this court and in hearing here, to wit: the case of the King versus T. H. Johnson, *alias* R. C. James?

A. I am the Crown Prosecutor.

Q. You have been appointed by the Attorney General of British Columbia as Crown Prosecutor in this case?     A. Yes, sir.

Q. When did that appointment occur?

A. On Friday the 12th day of December. There is no special appointment. I am Crown Prosecutor of the Attorney General's [96—44] department.

Q. When was your attention first called to this case, in your connection with it, when did your connection with this case originate?

A. Some time after three o'clock in the afternoon of the 12th of December, 1924.

Q. In your connection as Crown prosecutor in the case which is now on hearing here do you know when I was retained to represent your Government with reference to this matter that is now on hearing?

A. On the 12th of December, 1924.

Q. I ask you if you are familiar with the signature of A. M. Manson?     A. I am.

Q. Who is A. M. Manson?

A. Attorney General of the Province of British Columbia, chief law officer of that Province.



(Testimony of A. M. Johnson.)

Q. He is the chief law enforcement officer of that Province? A. Yes, sir.

Q. I will show you a letter which purports to bear the signature of the Honorable A. M. Manson, and ask you if that is the signature of Mr. Manson?

A. That is Mr. Manson's signature as Attorney General of the Province of British Columbia.

Mr. ROSS.—I offer Petitioner's Exhibit "B" in evidence, as Exhibit "B."

Mr. DORE.—No objection.

(Letter dated January 9th, 1925, received in evidence and marked Petitioner's Exhibit "B.")

Q. I will ask you briefly to state to the Court what is the law [97—45] of Canada with reference to the crime of robbery with violence?

A. The criminal laws of Canada were passed by the Federal Parliament and are administered in each of the Provinces by the Provincial authorities. The Criminal Code of Canada is the law governing crime and its punishment and extends, although enacted by the Dominion, extends to all of the nine Provinces of Canada, in the Criminal Code of Canada, Section 445 defines robbery as follows:

"Criminal Code of Canada. Robbery and Extortion. 445. Robbery defining the act. Robbery is theft accompanied with violence of threats of violence to any person or property used to extort the property stolen, or to prevent or overcome resistance to its being stolen. (55 Vict., C. 295—397.)"

Q. Mr. Johnson, I will ask you to state briefly to

(Testimony of A. M. Johnson.)

his Honor what is the law of Canada with reference to accomplices in crime?

A. The Criminal Code of Canada draws no distinction between the principals and accessories before the fact. They are each treated as principal offenders, indicted and prosecuted as such. The Criminal Code of Canada, Section 69 provides as follows:

“Parties to the offenses, 69. Every person is a party to and guilty of an offense who,—

(A) Actually commits it; or

(B) Does or omits an act for the purpose of aiding any person to commit the offense; or

(C) Abets any person in the commission of the offense; or [98—46]

(D) Counsels or procures any person to commit the offense.

2. If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offense committed by any one of them in the prosecution of such common purpose, the commission of which offense was, or ought to have been known to be a probable sequence of the prosecution of such common purpose.”

Q. You are the same A. M. Johnson who conducted the proceedings before the Police Magistrate in Nanaimo, British Columbia on the 2d day of January, are you not?     A. I am.

Q. Those are the depositions which have been read into the record in this matter?     A. They are.

(Testimony of A. M. Johnson.)

Q. And you have heard the further testimony that has been given in this court to-day? A. I have.

Q. I will ask you to state whether or not in your opinion that evidence, that is the depositions that have been read into this record here to-day, the same being Petitioner's Exhibit "A," and the oral evidence that has been given, whether or not that would make, in your opinion a *prima facie* case of robbery with violence under the Criminal Code of Canada as against the defendant T. H. Johnson, *alias* R. C. James?

Mr. DORE.—I object to that as being incompetent, immaterial and irrelevant and calling for a conclusion. That is conclusively the Province of the Judge and commissioner trying [99—47] the case.

The COURT.—The objection is overruled.

Mr. DORE.—Note an exception.

The COURT.—Exception allowed.

A. The evidence and the depositions, and the oral evidence would if the case were being heard in Canada or any Province of Canada be sufficient to put the accused on his trial and justify the magistrate to commit him for trial.

Q. Will it constitute in your opinion, a *prima facie* case?

Mr. DORE.—I make the same objection.

The COURT.—Objection overruled, exception allowed.

A. It would constitute a *prima facie* case for that reasons.

(Testimony of A. M. Johnson.)

Mr. ROSS.—You may cross-examine.

Mr. DORE.—No cross-examination.

(Witness excused.)

Mr. ROSS.—The petitioner rests.

Mr. DORE.—I understood that your Honor made a ruling in another similar case on testimony tending to show that the defendant was at a place other than the situs of the crime at the time charged was inadmissible.

The COURT.—Yes, sir.

OFFER OF RESPONDENT THAT HE WAS  
NOT IN BRITISH COLUMBIA AT TIME  
OF ALLEGED ROBBERY, Etc.

Mr. DORE.—You understand that we make the same objections, and the Court will adhere to the same ruling?

The COURT.—Yes, sir.

Mr. DORE.—With the permission of the Court, for the purpose of this record, will I be permitted to make my offer and counsel may object to it?

The COURT.—Yes, sir. [100—48]

Mr. DORE.—The respondent by himself and by a number of witnesses offers, at this time, to prove by testimony under oath given in open court, that on December 11th, 12th and 13th, he was in the State of California, and that on the day alleged he was at no time in Nanaimo or any other place in British Columbia, being then in the State of California.

Mr. ROSS.—To which offer we object upon the

ground and for the reason that it is wholly incompetent, immaterial and irrelevant in this matter that is now pending before your Honor and for the reasons stated in the other case.

Mr. DORE.—The ruling of the Court is that this defendant, or these witnesses, will not be permitted to give any testimony such as is offered?

The COURT.—Yes.

Mr. DORE.—Note an exception.

The COURT.—Exception allowed. You mean the testimony of alibi?

Mr. DORE.—That they were at a place different in accordance with the offer that I made.

Mr. ROSS.—Do I understand that the offer includes the accused himself, that he is desirous to give testimony.

Mr. DORE.—The offer is just what it is.

Mr. ROSS.—Now, if the Court please, my objection goes to the testimony offered in behalf of the defendant by other witnesses. I think that the defendant in this sort of a proceeding, as a matter of right, or to himself, has a right to appear and give testimony under our statute, and I think that that is the only thing that he has a right to do in the way of a showing at this time. My objection does [101—49] not go as to the accused himself giving testimony.

The COURT.—I sustain the objection as to the other witnesses, but overrule it, do not sustain it, as to the respondent.

Mr. DORE.—That is, he won't be permitted to offer any other witnesses.

The COURT.—No.

Mr. DORE.—Note an exception.

The COURT.—Exception.

Mr. DORE.—The defense rests.

The COURT.—I will have to find that there is probable cause for the defendant, T. H. Johnson, being held for extradition.

Mr. ROSS.—And that the defendant be held to stand committed?

The COURT.—Yes, sir, the defendant will stand committed until further orders.

Mr. DORE.—Mr. Ross stipulates in this record that he is an American citizen and he is not a member of the bar and holds no office under the British Columbia government, except as shown in this testimony heretofore in the other cases, that Mr. Ross is an American citizen.

Mr. ROSS.—That I am an American citizen, that I am not an officer of the Canadian government, except as appears by my employment in this matter as has been shown in this record heretofore.

The COURT.—All right.

Mr. ROSS.—Let the record show that the accused was present when that stipulation was entered into.

The COURT.—The record may so show. [102—50]